

## MINUTES HEARING OFFICER August 5, 2014

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Karen Stovall, Senior Planner  
Brandy Zeglar, Code Inspector  
Steve Nagy, Administrative Assistant II

**Number of Interested Citizens Present: 6**

Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by August 19, 2014 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for July 15, 2014 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the **Faretta Property (PL140210)** located at 4010 South Hanna Drive. The applicant is the City of Tempe – Code Compliance.

Brandy Zeglar, Code Inspector reviewed the details of the abatement, including a deteriorated landscape, and requested a 180-day open abatement.

**DECISION:**

Ms. MacDonald approved PL140210/ABT14028.

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3. Request approval for a Use Permit to allow conference/assembly use and a Use Permit for live entertainment for **Four Peaks Annex (PL140109)**, located at 2401 South Wilson Street. The applicant is Huellmantel & Affiliates.

Karen Stovall presented the case by reviewing the request details. Ms. Stovall also explained the changes that had been made to stipulations #4 and #7.

Ms. MacDonald and Ms. Stovall discussed the parking disparity, which was calculated based on the entire square footage of the building.

The applicant, Charles Huellmantel, Tempe, then approached the podium to present his application. He

reviewed the history of the building and the surrounding area, and continued by describing the current and proposed space usage the Use Permits would apply to.

Ms. MacDonald then amended stipulation #9, changing the weekend hours of operation from having no restriction to allowing operation between the hours of 5 a.m. to 2 a.m. Mr. Huellmantel agreed to this change.

Ms. MacDonald noted that this request meets the criteria for a Use Permit Standard:

- Any significant increase in vehicular or pedestrian traffic.
- Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals, objectives, or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- Compatibility with existing surrounding structures and uses.
- Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

**DECISION:**

Ms. MacDonald approved PL140109/ZUP14075/ZUP14088 subject to the assigned Conditions of Approval:

1. A development agreement with the City of Tempe which addresses required vehicle and bicycle parking shall be recorded prior to commencement of the uses.
2. These Use Permits are valid only after a Building Permit has been obtained, the required inspections have been completed, and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this site.
3. The Use Permits are valid for the site plan and floor plan as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
4. Modifications to the exterior of the building require Development Plan Review approval, per Zoning and Development Code Section 6-306.
5. Any intensification or expansion of uses shall require new Use Permits.
6. If there are any complaints arising from the Use Permits that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permits will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permits, which may result in termination of the Use Permits.
7. The Use Permits are valid for Four Peaks Brewery Annex (Four Peaks Brewing Company) and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee. Transfer of the use permit to a different business owner shall also require the recordation of a new development agreement.
8. The conference/assembly and live entertainment uses shall take place inside the building. No activity related to the uses is permitted outside. If temporary outdoor activities are desired, a special event permit must be granted through the Special Events Office of the Community Services Department.
9. Hours of operation shall be 4:00 pm to 2:00 am Monday through Friday. Hours of operation on Saturday and Sunday shall be between 5:00 am and 2:00 am. If temporary modification of these hours is desired, a special event permit must be granted through the Special Events Office of the Community Services Department.
10. The applicant shall contact the City of Tempe Crime Prevention Unit for an updated security plan within 30 days of this approval. Contact 480-858-6409 before September 4, 2014.
11. Stipulations of approval for ZUP13104 and ZUP13105 shall continue to apply to the operation of the bar and outdoor vending for food truck service.

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4. Request approval for a Use Permit for tobacco retail (hookah lounge) for **Habookah (PL140211)**, located at 6340 South Rural Road, Suite 111-112. The applicant is Cody Bahner of Habookah LLC.

Karen Stovall presented the case to the Hearing Officer by reviewing the location of the site, the proposed business, and its proximity to the nearest school, which meets the separation requirement. She continued that she had received two calls of opposition, one regarding a concern over increased traffic, and the other regarding the proximity of a tobacco retailer to the nearest school.

With no questions of staff, Ms. MacDonald called up the applicant, Cody Bahner. She then went through the stipulations with the applicant to ensure he had a full understanding of what was expected of him, which he acknowledged he did. Ms. Macdonald then added a 13<sup>th</sup> stipulation, which required the applicant to return after one year of operation for review.

She then reviewed the criteria for a Use Permit:

- Any significant increase in vehicular or pedestrian traffic.
- Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals, objectives, or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- Compatibility with existing surrounding structures and uses.
- Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

**DECISION:**

Ms. MacDonald then approved PL140211/ZUP14076 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained, the required inspections have been completed, and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. Live entertainment requires a separate Use Permit.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before **September 4, 2014**.
7. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
8. Hours of operation are limited to Sunday through Thursday, 9:00 am to midnight and Friday through Saturday 9:00 am to 2:00 am.
9. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
10. Replace all dead or missing trees and landscape along the Rural Road street frontage and within parking lot planters by **November 5, 2014**.
11. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
12. An updated parking model is required for this request. Submit a list of all suites within each building, business names, square footage of each business, and the number of existing parking spaces, including accessible and bicycle spaces. Staff will use this information to verify future parking availability. Provide this information by **September 4, 2014**.
13. The Applicant shall return to the Hearing Officer for review of compliance with the conditions of approval in one year. (ADDED BY HEARING OFFICER)

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The next Hearing Officer public hearing will be held on August 19, 2014.

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There being no further business the public hearing adjourned at 2:05 PM.

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Prepared by: Steve Nagy, Administrative Assistant II  
Reviewed by:



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Steve Abrahamson, Planning & Zoning Coordinator  
for Vanessa MacDonald, Hearing Officer

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